RIGHTS STUFF

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FMLA and ADA Case May Go to Jury

Steven Smothers worked as a mechanic in a mine for Solvay Chemicals from 1990 until 2008. He hurt his neck in 1994, causing him pain and requiring him to undergo several operations. The pain sometimes caused him serious sleeping problems.

Smothers asked for and was granted Family and Medical Leave Act (FMLA) leave to cover the intermittent absences caused by his condition. Solvay considered Smothers to be an excellent mechanic, but some managers complained about his absences. The company tried to force him to work days, where his absences would have caused less of a problem but which would have cost him $7,000 a year in lost pay. Human Resources told managers that forcing Smothers to work days might be illegal, so the company backed off, but people kept complaining about his absences.

In 2008, Solvay investigated a complaint that Smothers had violated its safety procedures and had engaged in an argument with a co-worker. They sent him home pending an investigation. Whether he did or did not violate the procedures is arguable; he did admit to some improper action, explain why he had taken the action he took and promised not to do it again. Managers talked to three witnesses to the argument at length but never talked to Smothers in detail to get his version of the argument. Solvay terminated Smothers and he sued.

Solvay filed a motion for summary judgment, saying that it had legitimate, nondiscriminatory reasons for terminating Smothers and the case should not go any further. But the Court said that Smothers had sufficient evidence that other employees had violated more serious safety rules without being terminated, and it should be up to the jury to decide if Solvay had a good reason to terminate him.

The Court also gave substantial weight to the fact that the company had never gotten Smothers' version of the argument. Conducting a truncated investigation, the Court said, "suggests that Solvay's decision makers deliberately prevented Mr. Smothers from defending his actions with respect to the quarrel and consequently reached their conclusions about what transpired based on one-sided information - then fired Mr. Smothers based largely on those tenuous conclusions."

The Court said that Smothers' case, alleging both violations of the FMLA and of the Americans with Disabilities Act, could go forward.

The case is Smothers v. Solvay Chemicals, Inc., 740 F3d 539 (10th Cir. 2014).

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EEOC Publishes New Guidelines on Religious Garb and Grooming in the Workplace

Federal, state and local fair employment laws all prohibit discrimination in employment on the basis of religion. The U.S. Equal Employment Opportunity Commission (EEOC) recently published new guidelines explaining what is, and what is not, religious discrimination. Some examples:

-- A Muslim woman works as a teller at a bank. The bank has a rule prohibiting tellers from wearing any head coverings. She wants to wear a religious headscarf during Ramadan. The bank will likely have to allow her to do so, unless the headscarf would cause an undue burden or safety issue for the bank.

-- A coffee shop hires a Sikh man who wears a turban. The shop owner notices that a construction crew stopped coming to the shop shortly after he hired the Sikh man. He inquires and finds out the crew believes the new employee is Muslim and they feel uncomfortable in the coffee shop when he's there. So the owner fires the new employee. Under the law, employers may not terminate an employee based on customer preferences, if that preference constitutes religious discrimination.

-- A sports club requires employees to wear white tennis shorts and a polo shirt with the facility logo. A Christian woman asks if she may wear a long white skirt instead of shorts to accommodate her religious belief that she must dress modestly. Unless allowing her to wear a skirt would cause an undue hardship, the facility must allow her to do so. And they don't have to allow other employees to deviate from the dress code unless they, too, have religious objections.

-- A Christian woman works at a library and wants to wear a cross at work. She also comes to work with an ash mark on her forehead after Ash Wednesday services. Her employer tells her that she can't wear the cross at work, and she has to wash off the ash, because he is concerned that her appearance might make patrons think the library endorses Christianity. The EEOC says that the woman's cross and ash mark "are clearly personal in this situation" ... and thus would not "cause a perception of government endorsement of religion."

If you have questions about religious discrimination, please contact the BHRC, or visit the EEOC's website, eeoc.gov.

Class Action Settlement for Deaf and Hearing Impaired Postal Workers

In the wake of the 9/11 anthrax attacks, Postal Services provided safety training to its employees on handling mail that could contain dangerous substances. But Postal Services did not have in place a good system for getting that important information to its deaf and hearing-impaired employees.

Hearing-impaired employees filed a class action suit to make sure there would be adequate access to interpreter services for deaf and hearing-impaired employees under the Rehabilitation Act (similar to the Americans with Disabilities Act). The suit was recently settled.

Under the terms of the settlement, the Postal Service will greatly expand the deployment and timely availability of qualified American Sign Language interpreters for important safety and workplace communications for deaf and hearing-impaired employees throughout the country. The class members will also share in a fund of compensatory damages of approximately $3 million. Attorneys representing the plaintiff agreed to donate part of their fees to public interest legal organizations that provide their service on a pro bono basis.

Discrimination Case Against Chicago Park District May Proceed

Lydia Vega is a gay Hispanic woman. She worked for the Chicago Park District for 22 years before she was terminated in 2012, for allegedly falsifying work hours on her timesheet. She sued, claiming she had been illegally discriminated against, and recently won the right to proceed with her lawsuit.

One of the park district's employees, an African American woman, complained that Vega was often absent from work. Several other African American employees also made complaints about Vega. Other Parks supervisors, all African Americans, launched an investigation. They followed Vega's vehicle, using audio and video devices. At some point, one of the investigators was heard on tape saying Vega "looks like a guy." The investigators allegedly peered through the windows of her home and asked her invasive questions. She said their investigation caused her severe health problems.

She provided documentation or testimony about where she was when she was allegedly absent from work, but was terminated anyway. At her post-termination meeting, she said Parks attorneys asked her questions about the length and style of her hair and style of her dress.

She sued, alleging that she had been discriminated against on the basis of her national origin, given that everyone who complained about her or investigated her was African American, and/or her sex. She also said that the department had never investigated or terminated a white or African American supervisor for failing to be in her or his assigned park while actually doing park duties at another location. She noted that it had investigated and terminated three other Hispanic supervisors.

The Parks department argued that Vega had not alleged a pattern or practice of discrimination, but the Court found she had, given that she alleged three other people in her protected category had been mistreated.

The department also argued that Vega had not shown she had been retaliated against because she had brought up her concerns about possible discrimination, but the Court found that before her termination, she had mentioned national origin discrimination in a letter, which was sufficient for her to go forth with her retaliation claim.

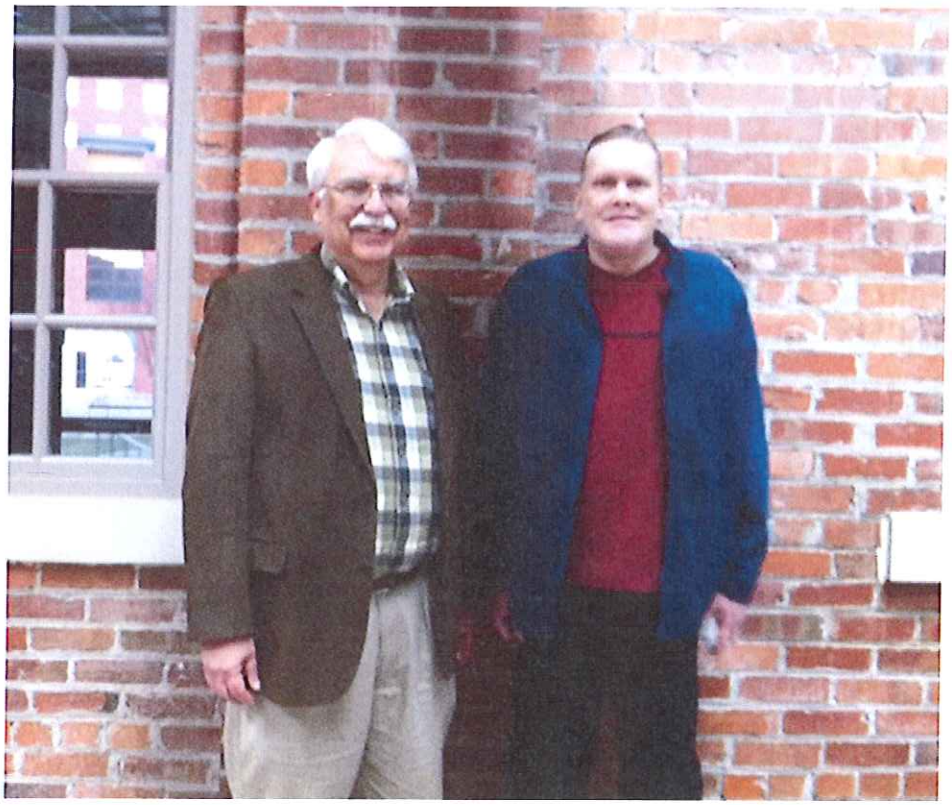
The fact that she was terminated within a month of raising concerns about discrimination was enough for her to be able to proceed with her complaint; the temporal proximity between her protected activity (complaining about discrimination) and her adverse employment activity (being terminated) was established.

The Court found that the stray offensive comments - that she "looked like a guy" and was asked about her manner of dress - were not enough to proceed with a sex discrimination complaint.

And the Court found that while it was not improper for the department to observe Vega while driving on public streets, it was improper for the department to peer into the windows of her home, and allowed that portion of the lawsuit to proceed as well.

The case is Vega v. Chicago Park District, 2013 WL 3866512 (ND Ill ED).

Mayor Mark Kruzan presented the winners of the 2014 BHRC essay/art contest their prizes at an awards ceremony on March 27, 2014.



David Metheny (right), recipient of the 2013 Human Rights Award, poses with Byron Bangert, BHRC Chair, at a council meeting on March 26, 2014.